IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEALS Nos 1853 to 1906 of 1999

in

FIRST APPEALS Nos 3449 to 3502 of 1999

And

LETTERS PATENT APPEALS NOS.1910 TO 1964 OF 1999
IN
FIRST APPEALS NOS.4616, 4623, 4622, 4621, 5098, 5099, 4620,5100, 4619, 4614, 5104,4608, 5106, 5107, 4609,4610, 4611, 4612, 4615, 4613, 4617, 4618, 4581, 4582, 4585, 4583, 4584, 4586, 4587, 5105,4588, 4589, 4590, 4591, 4592, 4593, 4594, 5093, 4596, 4595,4597, 4598,5095, 4599, 5094, 4600, 4601, 4603, 5103, 4602,4604, 4605, 4624, 4626, 4625 OF 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

REGIONAL DIRECTOR, EMPLOYEES' STATE INSURANCE CORPORATION

Versus

BABUBHAI KALIDAS

Appearance:

MR SR SHAH for Appellant

MR SUBRAMANIAM IYER for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 05/10/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. All these 109 Letters Patent Appeals are directed against the common judgment and order dated 26.10.1999 passed by the learned single Judge in First Appeals Nos.3449 to 3502 of 1999 and First Appeals Nos.4581 to 4605 (25), 4608 to 4626(19), 5093 to 5095 (3), 5098 to 5100(3) and 5103 to 5107 (5) of 1999 and, therefore, we propose to decide all these Letters Patent Appeals by this common judgment and order. 54 Letters Patent Appeals (1853 to 1906 = 54) have been filed by the Regional Director of E.S.I. against the rejection of the First Appeals preferred by the Corporation and 55 Letters Patent Appeals (1910 to 1964 = 55) have been filed against the allowing of the First Appeals preferred by the employees.

2. In the Crushing Plant of Alembic Glass Industries Limited of Vadodara, the employees, who were covered under the E.S.I. Scheme, suffered disability ; extent of such disability and loss of earning capacity was decided by the Medical Board as a First Forum in 1984, 1985 and 1986 under Sec.54-A of the Employees' State Insurance Act, 1948 in the reference. Aggrieved from the decision of the Medical Board, the Employees approached the Medical Appellate Tribunal. The Medical Appellate Tribunal decided the matter in 1989 by different orders and enhanced the percentage of disability as was determined by the Medical Board as the First Forum. The Employees still aggrieved from the determination by the Medical Appellate Tribunal, preferred Appeals before the E.S.I. Court as Second Appeals and such Appeals under Sections 54-A and 55 were decided by the E.S.I. Court on 29.1.99. Against the common order dated 29.1.99 passed by E.S.I. Court in all the matters, 55 First Appeals were preferred by the employees and 54 First Appeals were preferred by the Regional Director of the E.S.I. Corporation before this court. First Appeals preferred

by the Employees have been allowed and those preferred by the Corporation have been dismissed by order dated 26.10.99 by the learned single Judge of this Court. Against allowing of the 55 Appeals of Employees and the dismissal of the 54 Appeals of the Corporation by the learned single Judge by his common Judgment and order dated 26.10.99, the present 109 Letters Patent Appeals have been preferred by the Regional Director of E.S.I. and this is how these 109 Letters Patent Appeals are before us.

3. At the very threshold Mr. Subramaniam appearing for the employees and respondents herein has raised a preliminary objection that these Letters Patent Appeals are not maintainable in view of provisions of Sec.100A of Civil Procedure Code as also in view of the latest decision of the Supreme Court in the case of Municipal Corporation of Brihanmumbai v. State Bank of India, reported in (1999) 1 SCC 123, in view of Clause 15 of Letters Patent, Appeal from the judgment and order of the learned single Judge passed in appeals under Section 82 of the ESI Act and reliance has also been placed on a decision of the Division Bench of this court in the case of J.J.Desai v. Gujarat Chamber of Commerce and Industry, reported in 2000(1) GLR 920.

4. Mr. S.R.Shah for the appellant has submitted that the dispute, which was decided by the Medical Board initially was a dispute in a Reference and that so far as the reference proceedings are concerned, it cannot be said to be a first forum as there is no question of any lis between the Corporation and the Employees at that stage before the Medical Board. He has also placed reliance on the decision rendered by a Division Bench of Andhra Pradesh High Court in the case of M/s. Southern Roadways (Pvt) Ltd. v. The Employees' State Insurance Corporation, reported in 1973 Lab.I.C. 1555.

5. We have heard learned counsel for both the sides. In the facts of the present case, even if the argument of Mr. S.R.Shah is accepted that the proceedings in Reference cannot be treated as a first forum, the fact remains that the order was passed by the Medical Appellate Tribunal, which was further made a subject matter of challenge before the E.S.I. Court. Therefore, even if we assume that the first decision determining the lis was that of Medical Appellate Tribunal and the order passed in reference proceedings is not treated as the first forum it was second Appeal before the ESI Court as second forum and that was the second forum where the parties were in contest. The next forum which can be

said to be the third forum was the First Appeal before the learned single Judge of this Court and virtually now this Letters Patent Appeal is before the fourth forum. As a matter of fact, in the orders which have been passed by the ESI Court, ESI Court has decided the cases as second Appeals and naturally the First Appeals which were decided by this court were before the third forum and now it is the fourth Appeal by way of Letters Patent Appeal. To make it more clear:-

(i) Reference
(ii) Medical Appellate Tribunal
(iii) E.S.I. Court
(iv) First Appeals before learned single Judge
(v) Letters Patent Appeals before Division Bench

The Supreme Court in the case of Municipal Corporation of Brihanmumbai (Supra) has laid down in no uncertain terms while deciding the question of maintainability of such Letters Patent Appeals that the same are not maintainable. In the said case, the Supreme Court was concerned with a case under the Bombay Municipal Corporations Act, 1888. The proceedings under Sec.217 (1) were held as appellate proceedings in second forum and not as original proceedings in the first forum and further that Appeal under S.218D was a Second Appeal in the third forum. Similar is the situation in the present case with regard to the Appeals, which have been decided by the learned single Judge as was preferred under S.82 of ESI Act. So far as Andhra Pradesh decision, on which reliance has been placed, is concerned, it may be pointed out that the Division Bench of Andhra Pradesh High Court had decided the maintainability with regard to the Appeals to the High Court only and what was considered by the Division Bench of the Andhra Pradesh High Court was that there is no bar to subsequent Appeal under Clause 15 of the Letters Patent. It was also considered by the Andhra Pradesh High Court that there is nothing in the Act making the Appeal filed under Section 82(2) to be final and hence the Appeal against the decision of the learned single Judge under Clause 15 of the Letters Patent was competent. We find that in view of the decision of the Apex court in the case of Municipal Corporation of Brihanmumbai (Supra), these Appeals cannot be held to be maintainable. In the Division Bench Decision of our own High Court in the case of J.J.Desai v. Gujarat Chamber of Commerce & Industry (Supra) a view has been taken while considering the provisions of Sec.15 of the Letters Patent read with Sec.100A of the Civil Procedure Code that Letters Patent Appeals are to be entertained only

when the High Court exercised the original jurisdiction and in case where the learned single Judge decides the matter against the order passed in exercise of appellate jurisdiction, the Letters Patent Appeal is not maintainable. In view of this position of law, these Letters Patent Appeals cannot be held to be maintainable and the same are dismissed as not maintainable. In the facts of the present case, the parties are left to bear their own costs.

The interim relief, which was granted in Civil Applications Nos.15393 to 15446 (54) and 15454 to 15508 (55) of 1999 automatically comes to an end and ceases to be operative.

(M.R.Calla,J)

(R.R.Tripathi,J)